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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,145	05/31/2001	Brian Fields	CC-3184	9252

7590 09/06/2006

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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/857,145

Applicant(s)

FIELDS, BRIAN

Examiner

Tri M. Mai

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03/16/06</u> | 6) <input type="checkbox"/> Other: ____ |

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1. In view of the prior art dated 03/16/06, the allowability of claims 1-10 are withdrawn.

2. Applicant to provide in Fig. 3 and graphs 1 and 2 with legends indicating which belongs to the prior art and which is of the present invention. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will be held in abeyance.

3. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by the admitted prior art (Superend 202). As indicated in the Notice of Opposition, the 202 Superend LOE was measured. It is noted of page 5 wherein the LOE 202 Superend was measured having a diameter of 1.4724 inches, the opening having an area of .487 square inches, and an aspect ratio of 1.49.

4. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art (202 LOE) in view of Clarke, III. As indicated in the Notice of Opposition, the 202 LOE was measured. It is noted the LOE 202 was measured having a diameter of less than 1.835 inches, the opening having an area of .593 square inches, and an aspect ratio of 1.49. Clarke III teaches that it is known in the art to provide an area of less than .5 square inches (col. 2, ln. 15-16). It would have been obvious to one of ordinary skill in the art to provide a smaller area to provide the desired opening size for the container.

5. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Clarke, III. Clarke, III teaches a container having a center panel that can be made with various sizes (col. 2, line 24), and an area of less than .5 square inches. Although Clark, III does not mention the ratio aspect between 1.3 and 1.7. Base on the prior art cited, it is recognized in the art that the LOE openings generally has an aspect ratio of 1.49. Since the diameter is a factor of the area measurement, the diameter of Clarke III would inherent meet the claimed limitation as well.

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6. Claims 1-10 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke, III in view of Carnaudmetal (WO9637414), and further in view of either Schmalbach (EP432659), or the admitted prior art. Clarke, III teaches a container having a center panel that can be made with various sizes (col. 2, line 24), and an area of less than .5 square inches. Clarke, III meets all claimed limitations except for the diameter of the center panel being less than 1.835 inches and the ratio aspect between 1.3 and 1.7. Carnaudmetal teaches that it is known in the art to provide various diameters for a center panel (Table 6). It would have been obvious to one of ordinary skill in the art to provide the diameter of the center panel being less than 1.835 in Clarke, III as taught by Carnaudmetal to provide the desired end wall for the container.

With respect to the opening ratio, Schmalbach teaches that it is known in the art to provide an opening about 1.5 (31mm/20mm about the opening in Fig. 1). It would have been obvious to one of ordinary skill in the art to provide the opening with a ratio about 1.5 in Clarke, III as taught by Schmalbach to provide the desired opening for the container.

Furthermore, the specification discloses an opening with a ratio about 1.47 (page 8, line 13). It would have been obvious to one of ordinary skill in the art to provide an opening with a ratio about 1.5 in Clarke, III as taught by the admitted prior art to provide the desired opening for the container.

Even to the degree it is argued that the flow rate is not being taught by the applied references as set forth above. The patentability of a product does not depend on its method design of such product. If the product in is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different design process.

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7. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Schmalbach (EP432659) or the admitted prior art in view of Clarke, III, and further in view of Carnaudmetal (WO9637414). It would have been obvious to one of ordinary skill in the art to use the standard size openings of less than .5 square inches in opening by Schmalbach or the admitted prior art as taught by Clarke, III to provide the desired opening

Carnaudmetal teaches that it is known in the art to provide various diameters for a center panel (Table 6). It would have been obvious to one of ordinary skill in the art to provide the diameter of the center panel being less than 1.835 to provide the desired end wall for the container.

With respect to the opening ratio, Schmalbach teaches that it is known in the art to provide an opening about 1.5 (31mm/20mm about the opening in Fig. 1). It would have been obvious to one of ordinary skill in the art to provide the opening with a ratio about 1.5 in Clarke, III as taught by Schmalbach to provide the desired opening for the container.

Furthermore, the specification discloses an opening with a ratio about 1.47 (page 8, line 13). It would have been obvious to one of ordinary skill in the art to provide an opening with a ratio about 1.5 in Clarke, III as taught by the admitted prior art to provide the desired opening for the container.

Even to the degree it is argued that the flow rate is not being taught by the applied references as set forth above. The patentability of a product does not depend on its method design of such product. If the product in is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different design process.

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8. It is noted that the declarations, along with Graphs 1 and 2 have been reconsidered. The examiner noted that the test range are not bound by the parameters as set forth in the claims, i.e., there is only one test with respect to the area being .450 square inches, while the claims set forth an area of .5 square inches. Furthermore, it is noted that the claim set forth the ranges of 1.3 to 1.7. However, the test range only set limit at only one value. A wide range of tests is needed to establish the range as set forth in the claims. Furthermore, in view of the disclosure of the measurements of the 202 LOE, the result as achieved by the test is underperforming the LOE202 with respect to the flow rate. Thus, the examiner don't see any unexpected result coming from the test results. The declaration is ineffective.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai

**TRI M. MAI
PRIMARY EXAMINER**